

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lily Kim	Team: Squad #06	CCRB Case #: 202003500	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 05/21/2020 7:05 PM	Location of Incident: In front of § 87(2)(b) [REDACTED]	18 Mo. SOL 5/4/2022	Precinct: 40
Date/Time CV Reported Fri, 05/22/2020 2:53 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 05/22/2020 2:53 PM

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Jayther Liriano	27634	964614	PSA 7
3. An officer			
4. POM Thomas Rossi	07591	961205	PSA 7
5. PO Jose Cordero	14899	956547	PSA 7
6. PO Jimmy Perez	08269	941242	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ernst Celestin	28671	966991	040 PCT
2. POM Michael Visintin	14001	953536	PSA 7
3. POM Charlie Nunez	00789	961012	PSA 7
4. SGT Joey Alix	00456	933789	PSA 7
5. POM Brett Malfetano	14275	966183	040 PCT
6. POM Stephen Barry	17142	954525	040 DET
7. POM Scott Pariona	23554	963198	040 PCT
8. POM Luke Speranza	11812	965879	040 PCT
9. POM Nivez Hernandez	19129	958693	PSA 7
10. POM Harrynson Lopez	28226	955086	040 PCT
11. POM Peter Delohery	29163	967037	040 PCT
12. POM Michael Mcdonald	21164	963152	040 PCT
13. POM Christophe Pruner	06305	962028	040 PCT
14. POF Lorangy Vasquez	22078	960048	PSA 7
15. LT Anselmo Ioele	00000	938869	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
16. PO Benito Cruz	00177	938295	047 DET
17. PO Moises Garcia	07709	970538	047 PCT
18. SGT William Miller	03280	930740	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Jayther Liriano	Force: Police Officer Jayther Liriano used physical force against § 87(2)(b)	
B . Officers	Force: Officers used physical force against § 87(2)(b)	
C . PO Jimmy Perez	Force: Police Officer Jimmy Perez used physical force against § 87(2)(b)	
D . PO Jimmy Perez	Force: Police Officer Jimmy Perez used a chokehold against § 87(2)(b)	
E . An officer	Force: An officer used physical force against § 87(2)(b)	
F . PO Jose Cordero	Force: Police Officer Jose Cordero restricted § 87(2)(b) breathing.	
G . Officers	Force: Officers struck § 87(2)(b) with asps.	
H . An officer	Force: An officer used physical force against § 87(2)(b)	
I . An officer	Abuse: An officer threatened to arrest § 87(2)(b)	
J . An officer	Abuse: An officer threatened to arrest an individual.	
K . POM Thomas Rossi	Force: Police Officer Thomas Rossi used physical force against § 87(2)(b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

## Case Summary

On May 22, 2020, § 87(2)(b) filed the following complaint via the CCRB online complaint form.

On May 21, 2020 at approximately 7:05 p.m., § 87(2)(b) was in front of § 87(2)(b) in the Bronx, with his relatives, § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b). A physical fight ensued between § 87(2)(b) and a stranger, § 87(2)(b). PO Jayther Liriano and PO Michael Visintin of PSA 7 arrived in a police vehicle and broke up the fight. PO Liriano stated that he will issue a summons to both individuals. When PO Liriano learned § 87(2)(b) name, he recognized it and immediately attempted to place § 87(2)(b) into handcuffs. Additional officers arrived, including PO Scott Pariona, Sgt. William Miller, and PO Brett Malfetano of the 40<sup>th</sup> Precinct and PO Jimmy Perez and PO Jose Cordero of PSA 7. Officers assisted PO Liriano in taking § 87(2)(b) down to the ground and handcuffing him (**Allegations A-B—Force**, § 87(2)(g) PO Perez punched § 87(2)(b) in his ribs on his right side (**Allegation C—Force**, § 87(2)(g) While § 87(2)(b) was bent over at the waist, PO Perez allegedly used a chokehold on § 87(2)(b) (**Allegation D—Force**, § 87(2)(g) When § 87(2)(b) was on the ground, an officer allegedly kicked § 87(2)(b) in the head (**Allegation E—Force**, § 87(2)(g) PO Cordero kneeled and applied pressure on the back of § 87(2)(b) neck, and § 87(2)(b) stated multiple times that he could not breathe (**Allegation F—Force**, § 87(2)(g) Three to four unspecified officers used their asps to hit § 87(2)(b) (**Allegation G—Force**, § 87(2)(g) An officer allegedly pushed and threatened to arrest § 87(2)(b) (**Allegations H and I—Force and Abuse of Authority**, § 87(2)(g) An officer also allegedly threatened to arrest an unidentified passerby who told the officers that what they were doing was wrong (**Allegation J—Abuse of Authority**, § 87(2)(g) PO Rossi allegedly pushed § 87(2)(b) (**Allegation K—Force**, § 87(2)(g) § 87(2)(g), § 87(4-b) § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were both arrested and released with DATs. § 87(2)(b) and § 87(2)(b) were both charged with assault with intent to cause physical injury, and § 87(2)(b) was additionally charged with disorderly conduct (fight/violent behavior).

Cellphone video (**BR 01**) and 16 BWC videos (**BR 02-18**) were obtained by the investigation. Sgt. Miller's BWC footage was not obtained because his camera malfunctioned and he properly notated this in his memo book.

## Findings and Recommendations

**Allegation A—Force: PO Jayther Liriano used physical force against § 87(2)(b)**

**Allegation B – Force: Officers used physical force against § 87(2)(b)**

**Allegation C—Force: PO Jimmy Perez used physical force against § 87(2)(b)**

**Allegation D—Force: Police Officer Jimmy Perez used a chokehold against § 87(2)(b)**

**Allegation E—Force: An officer used physical force against § 87(2)(b)**

It is undisputed that § 87(2)(b) and § 87(2)(b) engaged in a physical fight that PO Visintin and PO Liriano broke up. PO Visintin arrested § 87(2)(b) and additional units were requested to the location.

At the 1:04 minute mark in PO Liriano's BWC footage (**BR 04**), § 87(2)(b) attempts to pull his left arm out of PO Liriano's grasp. A physical struggle ensues as officers approach and take § 87(2)(b) down to the ground.

At the 0:31 mark in PO Barry's BWC footage (**BR 06**), PO Perez's arm is on top of § 87(2)(b) shoulders/back area, and his hand hangs down. At the 0:32 mark, PO Perez's arm is wrapped around the back of § 87(2)(b) head, with his forearm gripping § 87(2)(b) forehead.

At the 0:27 minute mark in PO Pariona's BWC footage (**BR 07**), PO Perez punches § 87(2)(b) back.

§ 87(2)(b) testified (**BR 18**) that he stood in front of § 87(2)(b) in the Bronx with his relatives. A confrontation escalated to a fight between § 87(2)(b) and § 87(2)(b). About one to two minutes after the fight began, ten to fifteen officers arrived in four marked NYPD vehicles. PO Liriano broke up the fight and asked § 87(2)(b) for his ID, but he did not have it on him. § 87(2)(b) provided his full name to PO Liriano. § 87(2)(b) backed up against the wall of the building because there was so much going on, and there were so many people yelling. PO Liriano pulled out his handcuffs and told § 87(2)(b) to turn around and put his hands behind his back. PO Liriano reached for § 87(2)(b) arm, and § 87(2)(b) asked him what he was being arrested for, but he did not answer. § 87(2)(b) pulled his arm away from PO Liriano. § 87(2)(b) shifted along the wall sideways, away from PO Liriano, and PO Liriano grabbed § 87(2)(b) left arm near the wrist. Officers then bent § 87(2)(b) over at the waist so that he faced the ground and told him to stop resisting. PO Perez punched § 87(2)(b) in his ribs on his right side, and he fell to the ground. § 87(2)(b) felt a kick to his head, but he did not know which officer kicked him. § 87(2)(b) told the officers that he was not resisting and that he was trying to give them his arms. § 87(2)(b) blacked out for some time and did not remember much else. When § 87(2)(b) came to, he was in handcuffs. An officer picked § 87(2)(b) up from the ground, and he was transported to the stationhouse. § 87(2)(b) sustained several injuries, including bruises on his face, a concussion, bruised right ribs, and sprained right knee. In a follow-up call (**BR 19**), § 87(2)(b) stated that he did not feel any pressure to the front of his neck at any time.

§ 87(2)(b) testified (**BR 20**) that § 87(2)(b) did not try to move away from PO Liriano to avoid arrest. Around this time, approximately ten to fifteen more officers arrived, grabbed § 87(2)(b) and began punching him in the head and kicking him. § 87(2)(b) did not see how the physical interaction initially started because it happened very quickly while she was turned away. § 87(2)(b) "threw himself" on the ground because there were so many officers. § 87(2)(b) was on the ground for six to seven minutes while the officers kicked and punched him. § 87(2)(b) had a visible limp as he was taken to the police vehicle, and § 87(2)(b) observed cuts and bruises on his face.

§ 87(2)(b) stated that (**BR 21**) less than a minute after the fight began, PO Liriano pulled up in a police vehicle and broke up the fight. § 87(2)(b) did not see § 87(2)(b) try to move away from the officers at any time. Additional officers responded, and PO Liriano and Sgt. Miller grabbed each of § 87(2)(b) arms and bent him forward. At some point, PO Perez put § 87(2)(b) in a headlock, with § 87(2)(b) head in his armpit, for almost a minute. § 87(2)(b) was unable to see if PO Perez's arm was wrapped all the way around § 87(2)(b) head or neck. Three to six officers then punched § 87(2)(b) on the top of his head. § 87(2)(b) was unable to describe any of the officers but saw several black gloved hands hitting § 87(2)(b). § 87(2)(b) did not remember how § 87(2)(b) got to the ground, but he was on the ground for less than a minute.. By the time § 87(2)(b) stood up, he was in handcuffs. Following his release from the PSA 7 stationhouse, § 87(2)(b) noticed that § 87(2)(b) walked with a visible limp, which he did not have before the interaction with the officers, as well as bruises on his face near his temples and disheveled hair.

§ 87(2)(b) statement (**BR 22**) was consistent with § 87(2)(b) with the following exceptions and additional details. Both § 87(2)(b) and § 87(2)(b) threw punches, but § 87(2)(b) did not sustain any visible injuries, but his hair was a little messy. After § 87(2)(b) told PO Liriano his name, additional officers arrived and the officers punched § 87(2)(b). § 87(2)(b) was unable to describe the officers who hit § 87(2)(b) on his face, his head, and all over his body. While § 87(2)(b) was bent over at the waist, an officer punched him in the face from below multiple times, in a manner § 87(2)(b) described as an uppercut. § 87(2)(b) ended up on the ground, on his chest. § 87(2)(b) did not see how § 87(2)(b) was taken to the ground. When the officers picked § 87(2)(b) up from the ground, his hair was disheveled and there were visible bruises, cuts, and scrapes on his face. He was in handcuffs. § 87(2)(b) clothes were disheveled, and his pants were down. § 87(2)(b) could not walk properly because his leg was hurt, and the officers dragged him to a marked police vehicle. § 87(2)(b) was taken to the stationhouse.

No statement was obtained from § 87(2)(b) and § 87(2)(b) who were uncooperative with the investigation.

PO Liriano testified (**BR 23**) that he and PO Visintin drove down East 146<sup>th</sup> Street when they saw § 87(2)(b) and § 87(2)(b) engaged in a fist fight, throwing punches at each other. They were surrounded by a crowd of approximately 30 individuals who just watched and recorded the fight. As PO Liriano and PO Visintin exited the vehicle and approached the fight, § 87(2)(b) stopped throwing punches, but § 87(2)(b) grabbed § 87(2)(b) by the shirt and attempted to throw him through the windshield of a parked vehicle. PO Liriano did not remember if he issued any commands to § 87(2)(b) or § 87(2)(b) when he exited the vehicle, he may have verbally told them to stop fighting. PO Liriano did not intend to place § 87(2)(b) and § 87(2)(b) under arrest until he saw that they would not stop fighting. PO Liriano grabbed § 87(2)(b) and took him toward the building, and PO Visintin grabbed § 87(2)(b) and took him toward the street. At this time, there were no other officers present, but PO Liriano requested additional units at some point during the interaction. PO Liriano did not observe any injuries. PO Liriano did not remember if he had a conversation with § 87(2)(b) or if he asked § 87(2)(b) any questions prior to placing him in handcuffs. § 87(2)(b) and § 87(2)(b) were being arrested for assault because they fought each other. PO Liriano told § 87(2)(b) to place his hands behind his back and that he was under arrest. § 87(2)(b) resisted by saying no and flailing his arms. PO Liriano was able to place a handcuff on one hand, and § 87(2)(b) stretched his other arm out so that it could not be cuffed. PO Liriano held the handcuffs securely. § 87(2)(b) was a larger individual, approximately 5'8"-9" and 230 pounds, with a stocky build. PO Liriano did not remember specifically which officers or how many officers assisted him in handcuffing § 87(2)(b). PO Liriano held onto § 87(2)(b) arm with the cuff after the officers came to assist him, but he did not know exactly what actions the other officers took. § 87(2)(b) was taken down to the ground. § 87(2)(b) was face down on the ground when § 87(2)(b) was cuffed, but PO Liriano was not sure if he was face down the entire time. PO Liriano did not take any actions besides just holding onto § 87(2)(b) arm, which he already cuffed. PO Liriano needed other officers to help him get the other arm. PO Liriano did not punch, kick, or place § 87(2)(b) in a chokehold. PO Liriano did not see any officers punch, kick, or place § 87(2)(b) in a chokehold. PO Liriano did not remember if any officers had their arm around § 87(2)(b) head or neck region. § 87(2)(b) did not punch or kick any officers. § 87(2)(b) did not attempt to pull his handcuffed hand out of PO Liriano's grasp. PO Liriano did not see any officers punch § 87(2)(b) in the head or in the face. It took the officers less than a minute to get § 87(2)(b) down to the ground and handcuffed. § 87(2)(b) and § 87(2)(b) had redness in their faces and one of them was bleeding. PO Liriano did not remember where the bleeding was, but the bleeding occurred as a result of the fight between § 87(2)(b) and § 87(2)(b). § 87(2)(b) did not complain

that his injuries were specifically a result of the officers' actions.

PO Malfetano's statement (**BR 24**) was consistent with PO Liriano's, with the following additional details. When PO Malfetano and PO Speranza arrived on scene, approximately 10 to 15 officers were already on scene. PO Malfetano observed approximately five officers attempt to arrest § 87(2)(b). This was the first physical contact PO Malfetano observed between officers and § 87(2)(b). PO Malfetano did not hear any conversation between the officers and § 87(2)(b) prior to turning around and seeing the arrest. § 87(2)(b) resisted arrest by tensing, but he did not do anything else to resist. Within seconds of seeing the attempt to arrest § 87(2)(b), PO Malfetano walked toward them and grabbed § 87(2)(b)'s left upper arm/bicep because he saw that it was free and released it after approximately five to six seconds. PO Malfetano was not sure if by grabbing § 87(2)(b)'s arm, he also helped to take § 87(2)(b) down. While PO Malfetano held § 87(2)(b)'s arm, approximately seven to eight officers in total participated in taking § 87(2)(b) down to the ground. The takedown took approximately 10-15 seconds. Officers did not punch or kick § 87(2)(b).

PO Perez testified (**BR 25-26**) that he responded to a radio transmission requesting additional units in front of § 87(2)(b) in the Bronx. Upon arrival at the location, PO Perez noticed § 87(2)(b) by the building with PO Liriano. As PO Perez approached § 87(2)(b) and PO Liriano, he heard PO Liriano tell him to place his hands behind his back but § 87(2)(b) resisted. When § 87(2)(b) did not comply, PO Liriano physically attempted to handcuff § 87(2)(b). § 87(2)(b) resisted being handcuffed, and a physical struggle ensued with the officers who stood nearby. § 87(2)(b) tensed up and resisted arrest. PO Perez demonstrated § 87(2)(b)'s action by putting his arms up in an outward motion to get officers off him. The five to six officers got involved in the physical struggle by engaging in "grappling" in order to get § 87(2)(b)'s arms behind his back. PO Perez did not remember what specific actions officers took during the struggle. PO Perez tried to get § 87(2)(b)'s arms behind his back but he did not remember how he tried to do so or where he made physical contact with § 87(2)(b). PO Perez did not wrap his arm around § 87(2)(b)'s shoulders or neck. PO Perez did not remember if he wrapped his arm around § 87(2)(b)'s head. PO Perez did not remember if he punched § 87(2)(b). PO Perez did not observe any officers punch § 87(2)(b). PO Perez did not remember how § 87(2)(b) was taken to the ground, but he was ultimately handcuffed while on the ground. It took approximately 10 to 15 seconds to get § 87(2)(b) down to the ground. PO Perez did not remember if he did anything specifically to take § 87(2)(b) to the ground. § 87(2)(b) was quickly placed into cuffs once he was on the ground. PO Perez did not observe any officers kick § 87(2)(b) and PO Perez did not do so. Shortly after § 87(2)(b) was placed in handcuffs, he was brought up to stand. PO Perez denied that the action captured by PO Pariona's BWC at the 0:27 mark was a punch, and that he just "put his hand down."

PO Cordero's statement (**BR 27**) was mostly consistent with PO Perez's. When the physical struggle began because § 87(2)(b) resisted arrest, PO Cordero attempted to grab § 87(2)(b)'s right arm as he stood on § 87(2)(b)'s right side, but he "missed" (lost his grasp of the arm). One officer had handcuffs out, and another officer tried to grab § 87(2)(b)'s left arm. While this was happening, verbal orders were given to § 87(2)(b) to place his hands behind his back. When PO Cordero lost his grip of § 87(2)(b)'s arm, § 87(2)(b) fell forward and his momentum caused PO Cordero to fall onto his hands and knees. § 87(2)(b) also fell onto his knees and his side. PO Cordero did not observe officers do anything except for reaching for § 87(2)(b)'s arms to place them behind his back and cuff him. PO Cordero did not observe § 87(2)(b) getting punched in the head or anywhere else.

PO Cordero did not punch § 87(2)(b)

PO Pariona's statement (**BR 28**) included the following additional details. Within 45 seconds of the officers trying to arrest § 87(2)(b) PO Pariona decided to help the officers because § 87(2)(b) appeared to tense up his body to resist being handcuffed as an officer tried to grab his wrist or arm. PO Pariona believed that § 87(2)(b) held his arm tensed in front of his body. PO Pariona did not remember if § 87(2)(b) did anything else physically to resist arrest. PO Pariona did not remember if any officers gave § 87(2)(b) verbal commands before handcuffing him. PO Pariona did not remember § 87(2)(b) saying anything during the arrest. PO Pariona did not remember where he made physical contact with § 87(2)(b) body, or if he even made contact. PO Pariona did not remember if he or any other officers punched § 87(2)(b) PO Pariona did not punch or kick § 87(2)(b)

PO Hernandez testified (**BR 29**) that he assisted officers by holding § 87(2)(b) ankles with his hands to prevent § 87(2)(b) from kicking. He did not remember if he held both ankles. § 87(2)(b) did not kick, but PO Hernandez held his ankles as a precaution. On the ground, § 87(2)(b) flailed his arms. PO Hernandez did not remember if any additional officers joined the handcuffing attempt after he began to hold § 87(2)(b) ankles. The officers were able to handcuff § 87(2)(b) immediately after PO Hernandez began to hold his ankles. PO Hernandez held onto § 87(2)(b) ankles until he was handcuffed and then let go and moved out of the way. PO Hernandez did not see any officers punch or kick § 87(2)(b) He did not punch or kick § 87(2)(b)

As there were several officers that assisted PO Liriano with taking § 87(2)(b) to the ground and no civilian could specifically identify them, this Allegation B is pleaded to Officers.

According to Arrest # § 87(2)(b) (**BR 30**), § 87(2)(b) was arrested for assault with intent to cause physical injury and disorderly conduct (fight/violent behavior). The narrative states that § 87(2)(b) engaged in a physical fight with § 87(2)(b) Both parties had minor injuries, both refused medical attention (RMA) on scene. § 87(2)(b) actions caused public alarm and annoyance which led to a large crowd to gather around. According to Aided Report § 87(2)(b) § 87(2)(b) sustained bruising to his face and RMA.

Medical record § 87(2)(b) Hospital Center (**BR 32**) document § 87(2)(b) visit to the emergency department § 87(2)(b) § 87(2)(b) primary complaint was pain throughout his "whole body" and headaches following the incident with police officers on May 21, 2020. § 87(2)(b) reported a "throbbing" headache, right posterior rib pain and right knee pain. Right posterior inferior rib tenderness and mild right knee tenderness are recorded on page 12. § 87(2)(b) was given a brain and chest CT. § 87(2)(b) medical history notes assault and loss of consciousness pleura dyspnea. Final impression signed by § 87(2)(b) notes that there were no acute intracranial findings and no evidence of acute cardiopulmonary disease. § 87(2)(b) was treated with acetaminophen, ibuprofen, and metoclopramide for diagnoses of rib pain on right side, concussion, and alleged assault.

Force may be used when it is reasonable to ensure the safety of a member of service or third person, or otherwise protect life, or when it reasonable to place a person in custody or to prevent escape from custody. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy, Patrol Guide Procedure 221-01 (**BR 33**).

§ 87(2)(b) admitted that he resisted arrest by moving physically away and pulling his arm away from PO Liriano. This is consistent with PO Liriano's BWC and officers' statements. § 87(2)(g)

§ 87(2)(b) PO Perez is captured in the BWC punching § 87(2)(b) on the back of his ribcage on the right, which is consistent with § 87(2)(b) statement that a punch on his right side caused him to fall. § 87(2)(g)

§ 87(2)(g)

Although § 87(2)(b) alleged that an officer placed § 87(2)(b) in a headlock, he was unable to state whether the officer fully wrapped his arm around § 87(2)(b) neck and throat. § 87(2)(b) testified that he did not feel any pressure applied to the front of his neck, and PO Perez denied using a chokehold on § 87(2)(b). Although PO Perez is captured on BWC with his arm wrapped around § 87(2)(b) upper shoulder and the back of his neck, his arm does not reach to the front of § 87(2)(b) neck, although moments later his arm does wrap fully around § 87(2)(b) forehead.

§ 87(2)(g)

Although all the civilians alleged that § 87(2)(b) was punched and kicked multiple times, only PO Perez's punch was captured by BWC, and the kicks were not captured. However, this is insufficient to unfound the additional kicks and punches because of the camera angles. Although § 87(2)(b) felt a kick to his head, he did not know which officer did so, and none of the other civilians were able to provide detailed descriptions of the officers and what specific actions they took. A kick to § 87(2)(b) head, especially when he was on the ground, would be analyzed differently than other strikes, but all the officers testified that they either did not remember kicking or did not kick § 87(2)(b) and did not observe any officers kick § 87(2)(b)

§ 87(2)(g)

**Allegation F—Force: Police Officer Jose Cordero restricted § 87(2)(b) breathing.**

At the 1:29 minute mark in PO Liriano's BWC footage, PO Cordero's left knee is on the back of § 87(2)(b) neck and head. PO Cordero's foot is lifted off the ground and he appears to be bearing weight on his knee. § 87(2)(b) repeatedly states that he is unable to breathe, and his voice is strained. This is confirmed when PO Cordero moves his right foot at the 1:21 mark. He remains in that position until the 1:35 mark, when he plants his foot down and braces his shin against the back of § 87(2)(b) head and neck. § 87(2)(b) is stood up at the 1:54 mark.



At the 0:51 mark in PO Speranza's BWC (**BR 08**), PO Cordero is captured as the officer with his knee at § 87(2)(b) head. The other officers are standing on their feet, in squatting positions over § 87(2)(b). They do not appear to be bearing any weight on § 87(2)(b) body.

§ 87(2)(b) testified that he told the officers that he could not breathe because he felt claustrophobic with so many people on him. In follow-up calls (**BR 19 and BR 34**), § 87(2)(b) stated that he was unable to breathe because he was face down on the ground, and he felt a knee on the back of his neck, which was when he yelled that he could not breathe.

§ 87(2)(b) testified that he saw § 87(2)(b) lying face down on the ground, with several officers on top of his back, neck, and legs. § 87(2)(b) was unable to state exactly what parts of the officers' bodies were on top of § 87(2)(b) body. While this was happening, § 87(2)(b) heard § 87(2)(b) state that he could not breathe six to eight times.

§ 87(2)(b) testified that she heard § 87(2)(b) state that he could not breathe. § 87(2)(b) was turning red and purple because he had difficulty breathing. § 87(2)(b) had his arms behind his back, but he tried to roll over to his side because he could not breathe while on his stomach. § 87(2)(b) was on the ground for about a minute. § 87(2)(b) was not sure if an officer applied pressure on § 87(2)(b) neck. During a follow-up call (**BR 35**), § 87(2)(b) stated that she saw three officers kneeling on his back. § 87(2)(b) did not see the manner in which the officers knelt on his back.

PO Cordero testified that he did not remember § 87(2)(b) stating that he was unable to breathe. PO Cordero did not observe any other indications that § 87(2)(b) was unable to breathe. Officers were not physically on top of § 87(2)(b) while he was on the ground, and specifically their knees, legs, and feet were not on top of him. When he was shown PO Liriano's BWC at the 1:15 mark, PO Cordero acknowledged that his knee is captured in the camera frame by § 87(2)(b) head. PO Cordero did not apply pressure with that leg but braced it against § 87(2)(b) so that he could not turn onto his back while the officers handcuffed him. PO Cordero did not restrict § 87(2)(b) breathing and did not apply pressure on § 87(2)(b) neck. PO Cordero braced his leg against § 87(2)(b) to keep him from turning onto his back. PO Cordero's shin made contact with § 87(2)(b) upper back to brace him and that he did not make contact with § 87(2)(b) head at any point.

Officers are to avoid actions which may result in chest compression, such as sitting, kneeling, or standing on a subject's chest or back, thereby reducing the subject's ability to breathe, Patrol Guide Procedure 221-02 (**BR 36**).

§ 87(2)(b) testified that he felt officers on his back, and specifically a knee on the back of his neck when he was face down on the ground. He was unable to breathe. PO Cordero acknowledged that he used his leg on § 87(2)(b) upper shoulder and back area to brace against § 87(2)(b) and prevent him from turning. Although PO Cordero denied touching § 87(2)(b) neck or head, the BWC does capture his leg further up than just the shoulder region. PO Cordero additionally denied bearing any weight on § 87(2)(b) neck, but BWC shows that he moved his opposite leg, which is not possible unless he was bearing weight on the knee that was in contact with § 87(2)(b). Additionally, there is a clear moment in PO Liriano's BWC at the 1:35 mark when PO Cordero sets his foot down, which is when he appears to shift his weight from his knee to his foot. PO Cordero's knee was on the back of § 87(2)(b).

§ 87(2)(b) neck and head for approximately 20 seconds based on the BWC. It was previously established that § 87(2)(b) resisted primarily by tensing his body and pulling his arms away from the officers, but none of the officers testified that § 87(2)(b) swung, kicked, or otherwise behaved violently toward the officers. At the time of this incident in May 2020, the language used in Patrol Guide Procedure 221-02 stated to “avoid” this level of force, but given the level of resistance from § 87(2)(b) the number of officers who were involved in the physical handcuffing, the number of officers on scene, and the fact that § 87(2)(b) was already flat on the ground, § 87(2)(g)

§ 87(2)(b) PO Cordero is captured bearing weight on his knee on the back of § 87(2)(b) neck, § 87(2)(g)

**Allegation G—Force: Officers struck § 87(2)(b) with asps.**

In a follow up call, § 87(2)(b) stated that he was not aware if the officers used anything to strike him besides their fists and feet.

§ 87(2)(b) testified that approximately three to four officers hit § 87(2)(b) head and back with batons. She was unable to describe the officers who used the asps.

During follow-up calls, § 87(2)(b) and § 87(2)(b) (BR 37) stated that they did not see officers use any objects as weapons. They did not see the officers use any asps to strike § 87(2)(b)

PO Liriano, PO Thomas Rossi, Lt. Anselmo Ioele, and PO Cordero testified that they did not observe any officers pull out their asps or use them. PO Pariona, PO Hernandez, PO Vasquez, PO Barry, PO Perez, and Sgt. Miller did not remember if any officers withdrew their batons from their belts or used them during the incident.

It is undisputed that force was used to handcuff § 87(2)(b). However, § 87(2)(b) was the only witness who testified that she observed batons being used. Although BWC and cellphone footage does not capture everything that occurred during the takedown, there are no asps captured in any of the video. § 87(2)(g)

§ 87(2)(g)

**Allegation H—Force: An officer used physical force against § 87(2)(b)**  
**Allegation I—Force: An officer threatened to arrest § 87(2)(b)**

A statement was not obtained from § 87(2)(b) because he was uncooperative in this investigation.

§ 87(2)(b) testified that § 87(2)(b) asked the officers why they kept hitting § 87(2)(b) when he did not resist arrest. An officer approached § 87(2)(b) and pushed him on the arm with one hand. § 87(2)(b) and the officer argued, and the officer stated, “If you don’t move, if

you don't get out of here, you're going to get arrested."

§ 87(2)(b) stated that he saw § 87(2)(b) interact with an officer. They exchanged words. § 87(2)(b) was uncertain if the officer threatened to arrest or pushed § 87(2)(b).

§ 87(2)(b) stated that officers probably threatened to arrest some of the people present, but that she did not remember specifically hearing any threats of arrest. When asked if § 87(2)(b) saw an officer push § 87(2)(b) she stated that she remembered an officer arguing with § 87(2)(b). She has initially forgotten about the interaction involving § 87(2)(b) (b) but the question refreshed her memory, and she stated with certainty that an officer pushed § 87(2)(b). § 87(2)(b) did not hear the officer threaten to arrest § 87(2)(b).

§ 87(2)(g)

#### **Allegation J—Force: An officer threatened to arrest an individual.**

§ 87(2)(b) testified that an individual named § 87(2)(b) also told the officers to stop and an officer also told him that if he does not leave, he will get arrested. § 87(2)(b) did not know § 87(2)(b) last name or contact information.

§ 87(2)(b) § 87(2)(b) and § 87(2)(b) did not recognize the name § 87(2)(b).

§ 87(2)(g)

#### **Allegation K—Force: PO Thomas Rossi used physical force against § 87(2)(b)**

At the 1:02 mark in PO Rossi's BWC (BR 05), § 87(2)(b) walks back toward the physical interaction and yells that § 87(2)(b) cannot breathe and that she is pregnant. PO Rossi puts an arm up to prevent § 87(2)(b) from coming any closer. There is no physical contact. At the 1:30 mark, PO Rossi places his right hand on the front of § 87(2)(b) left shoulder and pushes her back slightly. At the 1:32 mark, § 87(2)(b) repeats that she is pregnant, and PO Rossi states that he does not care and to move back. At the 1:34 mark, § 87(2)(b) holds § 87(2)(b) by her shoulders and pulls her back.

During a follow-up call, § 87(2)(b) stated that PO Rossi stood approximately two feet in front of her and pushed her, even though he knew she was pregnant. § 87(2)(b) was propelled backward because of the push and had to take two steps back to regain balance.

PO Rossi testified that § 87(2)(b) attempted to walk past PO Rossi toward the arrest scene. PO Rossi asked her to step back because she was interfering with an arrest. § 87(2)(b) continued to try to get past PO Rossi, ignoring his orders. PO Rossi told her that she could not get close. After § 87(2)(b) ignored approximately five orders to get back, PO Rossi put his open hand on § 87(2)(b) shoulders to guide her back approximately one foot.

§ 87(2)(b) testified that PO Rossi pushed § 87(2)(b) and PO Rossi denied pushing § 87(2)(b). BWC corroborates PO Rossi's statement and shows that although there was brief physical contact to keep § 87(2)(b) from approaching officers as they arrested § 87(2)(b) it was not a push.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 38).
- § 87(2)(b)

- PO Liriano has been a member of service for four years and has been a subject in four cases and 14 allegations. All four cases are pending investigation.
- PO Cordero has been a member of service for seven years and has been a subject in 11 cases and 25 allegations, of which three have been substantiated:
  - 201702059 involved a substantiated allegation of frisk against PO Cordero. The Board recommended command level instructions and the NYPD imposed formalized training.
  - 201706354 involved substantiated allegations of retaliatory summons and vehicle search against PO Cordero. The Board recommended charges and the NYPD imposed forfeited vacation days and training.
- PO Perez has been a member of service for 15 years and has been a subject in eight cases and 17 allegations, of which one has been substantiated:
  - 201606548 involved a substantiated allegation of physical force against PO Perez. The Board recommended Command Discipline A and the NYPD imposed formalized training.
- PO Rossi has been a member of service for six years and has been a subject in one case and one allegation, which was not substantiated.

### Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]
- As of April 30, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**BR 42**).

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Squad No.: 6

Investigator: Lily Kim      Investigator Lily Kim      3/18/2022  
Signature      Print Title & Name      Date

Squad Leader: \_\_\_\_\_  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date